

SENATE BILL No. 346

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-2-2-4; IC 22-2-2.2.

Synopsis: Minimum wage; prevailing wage. Increases Indiana's minimum wage from \$5.15 to \$7.15 per hour. Requires a contractor that receives public financial assistance to pay prevailing wages on all construction projects undertaken by the contractor in Indiana. Provides that a contractor that knowingly or intentionally violates this requirement commits a Class B misdemeanor. Provides that a contractor that commits two offenses within 12 months is disqualified from receiving public financial assistance for three years.

Effective: July 1, 2003.

Howard

January 15, 2003, read first time and referred to Committee on Pensions and Labor.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 346

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-2-2-4, AS AMENDED BY P.L.234-1999,
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 4. (a) Every employer employing four (4) or more
4 employees during a work week shall:

5 (1) in any work week beginning on or after July 1, 1968, in which
6 ~~he the employer~~ is subject to the provisions of this chapter, pay
7 each of ~~his the employer's~~ employees wages of not less than one
8 dollar and twenty-five cents (\$1.25) per hour;

9 (2) in any work week beginning on or after July 1, 1977, in which
10 ~~he the employer~~ is subject to this chapter, pay each of ~~his the~~
11 ~~employer's~~ employees wages of not less than one dollar and fifty
12 cents (\$1.50) per hour;

13 (3) in any work week beginning on or after January 1, 1978, in
14 which ~~he the employer~~ is subject to this chapter, pay each of ~~his~~
15 ~~the employer's~~ employees wages of not less than one dollar and
16 seventy-five cents (\$1.75) per hour; and

17 (4) in any work week beginning on or after January 1, 1979, in



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1 which ~~he~~ **the employer** is subject to this chapter, pay each of ~~his~~
 2 **the employer's** employees wages of not less than two dollars (\$2)
 3 per hour.

4 (b) Except as provided in subsection (c), every employer employing
 5 at least two (2) employees during a work week shall, in any work week
 6 in which the employer is subject to this chapter, pay each of the
 7 employees in any work week beginning on and after July 1, 1990, and
 8 before October 1, 1998, wages of not less than three dollars and
 9 thirty-five cents (\$3.35) per hour.

10 (c) An employer subject to subsection (b) is permitted to apply a "tip
 11 credit" in determining the amount of cash wage paid to tipped
 12 employees. In determining the wage an employer is required to pay a
 13 tipped employee, the amount paid the employee by the employee's
 14 employer shall be an amount equal to:

15 (1) the cash wage paid the employee, which for purposes of the
 16 determination shall be not less than the cash wage required to be
 17 paid to employees covered under the federal Fair Labor Standards
 18 Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20,
 19 1996, which amount is two dollars and thirteen cents (\$2.13) an
 20 hour; and

21 (2) an additional amount on account of the tips received by the
 22 employee, which amount is equal to the difference between the
 23 wage specified in subdivision (1) and the wage in effect under
 24 subsections (b), (f), ~~and~~ (g), and (h).

25 An employer is responsible for supporting the amount of tip credit
 26 taken through reported tips by the employees.

27 (d) No employer having employees subject to any provisions of this
 28 section shall discriminate, within any establishment in which
 29 employees are employed, between employees on the basis of sex by
 30 paying to employees in such establishment a rate less than the rate at
 31 which ~~he~~ **the employer** pays wages to employees of the opposite sex
 32 in such establishment for equal work on jobs the performance of which
 33 requires equal skill, effort, and responsibility, and which are performed
 34 under similar working conditions, except where such payment is made
 35 pursuant to:

36 (1) a seniority system;

37 (2) a merit system;

38 (3) a system which measures earnings by quantity or quality of
 39 production; or

40 (4) a differential based on any other factor other than sex.

41 (e) An employer who is paying a wage rate differential in violation
 42 of subsection (d) shall not, in order to comply with subsection (d),

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1 reduce the wage rate of any employee, and no labor organization, or its
 2 agents, representing employees of an employer having employees
 3 subject to subsection (d) shall cause or attempt to cause such an
 4 employer to discriminate against an employee in violation of
 5 subsection (d).

6 (f) Except as provided in subsection (c), every employer employing
 7 at least two (2) employees during a work week shall, in any work week
 8 in which the employer is subject to this chapter, pay each of the
 9 employees in any work week beginning on or after October 1, 1998,
 10 and before March 1, 1999, wages of not less than four dollars and
 11 twenty-five cents (\$4.25) per hour.

12 (g) Except as provided in subsections (c) and ~~(f)~~, **(j)**, every employer
 13 employing at least two (2) employees during a work week shall, in any
 14 work week in which the employer is subject to this chapter, pay each
 15 of the employees in any work week beginning on or after March 1,
 16 1999, **and before July 1, 2003**, wages of not less than five dollars and
 17 fifteen cents (\$5.15) an hour.

18 (h) **Except as provided in subsections (c) and (j), every employer**
 19 **employing at least two (2) employees during a work week shall, in**
 20 **any work week in which the employer is subject to this chapter,**
 21 **pay each of the employees in any work week beginning on or after**
 22 **July 1, 2003, wages of not less than seven dollars and fifteen cents**
 23 **(\$7.15) an hour.**

24 (i) This section does not apply if an employee:

25 (1) provides companionship services to the aged and infirm (as
 26 defined in 29 CFR 552.6); and

27 (2) is employed by an employer or agency other than the family
 28 or household using the companionship services, as provided in 29
 29 CFR 552.109 (a).

30 ~~(f)~~ **(j)** This subsection applies only to an employee who has not
 31 attained the age of twenty (20) years. Instead of the rates prescribed by
 32 subsections (c), (f), ~~and~~ (g), **and (h)**, an employer may pay an
 33 employee of the employer, during the first ninety (90) consecutive
 34 calendar days after the employee is initially employed by the employer,
 35 a wage which is not less than ~~four six~~ **six** dollars and twenty-five cents
 36 ~~(\$4.25)~~ **(\$6.25)** per hour, effective ~~March 1, 1999~~ **July 1, 2003**.
 37 However, no employer may take any action to displace employees
 38 (including partial displacements such as reduction in hours, wages, or
 39 employment benefits) for purposes of hiring individuals at the wage
 40 authorized in this subsection.

41 ~~(j)~~ **(k)** Except as otherwise provided in this section, no employer
 42 shall employ any employee for a workweek longer than forty (40) hours

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1 unless the employee receives compensation for employment in excess
 2 of the hours above specified at a rate not less than one and one-half
 3 (1.5) times the regular rate at which ~~he~~ **the employee** is employed.

4 ~~(k)~~ **(l)** For purposes of this section the following apply:

5 (1) "Overtime compensation" means the compensation required
 6 by subsection ~~(j)~~: **(k)**.

7 (2) "Compensatory time" and "compensatory time off" mean
 8 hours during which an employee is not working, which are not
 9 counted as hours worked during the applicable workweek or other
 10 work period for purposes of overtime compensation, and for
 11 which the employee is compensated at the employee's regular
 12 rate.

13 (3) "Regular rate" means the rate at which an employee is
 14 employed is considered to include all remuneration for
 15 employment paid to, or on behalf of, the employee, but is not
 16 considered to include the following:

17 (A) Sums paid as gifts, payments in the nature of gifts made at
 18 Christmas time or on other special occasions, as a reward for
 19 service, the amounts of which are not measured by or
 20 dependent on hours worked, production, or efficiency.

21 (B) Payments made for occasional periods when no work is
 22 performed due to vacation, holiday, illness, failure of the
 23 employer to provide sufficient work, or other similar cause,
 24 reasonable payments for traveling expenses, or other expenses,
 25 incurred by an employee in the furtherance of ~~his~~ **the**
 26 employer's interests and properly reimbursable by the
 27 employer, and other similar payments to an employee which
 28 are not made as compensation for ~~his~~ **the employee's** hours of
 29 employment.

30 (C) Sums paid in recognition of services performed during a
 31 given period if:

32 (i) both the fact that payment is to be made and the amount
 33 of the payment are determined at the sole discretion of the
 34 employer at or near the end of the period and not pursuant
 35 to any prior contract, agreement, or promise causing the
 36 employee to expect the payments regularly;

37 (ii) the payments are made pursuant to a bona fide profit
 38 sharing plan or trust or bona fide thrift or savings plan,
 39 meeting the requirements of the administrator set forth in
 40 appropriately issued regulations, having due regard among
 41 other relevant factors, to the extent to which the amounts
 42 paid to the employee are determined without regard to hours

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of work, production, or efficiency; or

(iii) the payments are talent fees paid to performers, including announcers, on radio and television programs.

(D) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees.

(E) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because those hours are hours worked in excess of eight (8) in a day or in excess of the maximum workweek applicable to the employee under subsection ~~(j)~~ **(k)** or in excess of the employee's normal working hours or regular working hours, as the case may be.

(F) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where the premium rate is not less than one and one-half (1.5) times the rate established in good faith for like work performed in nonovertime hours on other days.

(G) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight **(8)** hours) or workweek (not exceeding the maximum workweek applicable to the employee under subsection ~~(j)~~ **(k)**) where the premium rate is not less than one and one-half (1.5) times the rate established in good faith by the contract or agreement for like work performed during the workday or workweek.

~~(j)~~ **(m)** No employer shall be considered to have violated subsection ~~(j)~~ **(k)** by employing any employee for a workweek in excess of that specified in subsection ~~(j)~~ **(k)** without paying the compensation for overtime employment prescribed therein if the employee is so employed:

- (1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand forty (1,040) hours during any period of twenty-six (26) consecutive weeks; or
- (2) in pursuance of an agreement, made as a result of collective

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bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two (52) consecutive weeks the employee shall be employed not more than two thousand two hundred forty (2,240) hours and shall be guaranteed not less than one thousand eight hundred forty (1,840) hours (or not less than forty-six (46) weeks at the normal number of hours worked per week, but not less than thirty (30) hours per week) and not more than two thousand eighty (2,080) hours of employment for which the employee shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to the employee under subsection ~~(j)~~ **(k)** or two thousand eighty (2,080) in that period at rates not less than one and one-half (1.5) times the regular rate at which the employee is employed.

~~(m)~~ **(n)** No employer shall be considered to have violated subsection ~~(j)~~ **(k)** by employing any employee for a workweek in excess of the maximum workweek applicable to the employee under subsection ~~(j)~~ **(k)** if the employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of the employee necessitate irregular hours of work, and the contract or agreement includes the following:

(1) Specifies a regular rate of pay of not less than the minimum hourly rate provided in subsections (c), ~~(f)~~, ~~(g)~~, **(h)**, and ~~(j)~~ **(j)** (whichever is applicable) and compensation at not less than one and one-half (1.5) times that rate for all hours worked in excess of the maximum workweek.

(2) Provides a weekly guaranty of pay for not more than sixty **(60)** hours based on the rates so specified.

~~(m)~~ **(o)** No employer shall be considered to have violated subsection ~~(j)~~ **(k)** by employing any employee for a workweek in excess of the maximum workweek applicable to the employee under that subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by ~~him~~ **the employee** in the workweek in excess of the maximum workweek applicable to the employee under that subsection:

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half (1.5) times



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the bona fide piece rates applicable to the same work when performed during nonovertime hours;

(2) in the case of an employee performing two (2) or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half (1.5) times those bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half (1.5) times the rate established by the agreement or understanding as the basic rate to be used in computing overtime compensation thereunder, provided that the rate so established shall be substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if the employee's average hourly earnings for the workweek exclusive of payments described in this section are not less than the minimum hourly rate required by applicable law, and extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

~~(p)~~ (p) Extra compensation paid as described in this section shall be creditable toward overtime compensation payable pursuant to this section.

~~(p)~~ (q) No employer shall be considered to have violated subsection ~~(j)~~ (k) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if:

(1) the regular rate of pay of the employee is in excess of one and one-half (1.5) times the minimum hourly rate applicable to the employee under section 2 of this chapter; and

(2) more than half of the employee's compensation for a representative period (not less than one (1) month) represents commissions on goods or services.

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be considered commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

~~(q)~~ (r) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be considered to have violated subsection ~~(j)~~ (k) if, pursuant to an agreement or understanding arrived at between the

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1 employer and the employee before performance of the work, a work
 2 period of fourteen (14) consecutive days is accepted in lieu of the
 3 workweek of seven (7) consecutive days for purposes of overtime
 4 computation and if, for his employment in excess of eight (8) hours in
 5 any workday and in excess of eighty (80) hours in that fourteen (14)
 6 day period, the employee receives compensation at a rate not less than
 7 one and one-half (1.5) times the regular rate at which the employee is
 8 employed.

9 ~~(s)~~ **(s)** No employer shall employ any employee in domestic service
 10 in one (1) or more households for a workweek longer than forty (40)
 11 hours unless the employee receives compensation for that employment
 12 in accordance with subsection ~~(j)~~: **(k)**.

13 ~~(s)~~ **(t)** In the case of an employee of an employer engaged in the
 14 business of operating a street, a suburban or ~~an~~ interurban electric
 15 railway, or local trolley or motorbus carrier (regardless of whether or
 16 not the railway or carrier is public or private or operated for profit or
 17 not for profit), in determining the hours of employment of such an
 18 employee to which the rate prescribed by subsection ~~(j)~~ **(k)** applies
 19 there shall be excluded the hours the employee was employed in
 20 charter activities by the employer if both of the following apply:

21 (1) The employee's employment in the charter activities was
 22 pursuant to an agreement or understanding with the employer
 23 arrived at before engaging in that employment.

24 (2) If employment in the charter activities is not part of the
 25 employee's regular employment.

26 ~~(t)~~ **(u)** Any employer may employ any employee for a period or
 27 periods of not more than ten (10) hours in the aggregate in any
 28 workweek in excess of the maximum workweek specified in subsection
 29 ~~(j)~~ **(k)** without paying the compensation for overtime employment
 30 prescribed in subsection ~~(j)~~; **(k)**, if during that period or periods the
 31 employee is receiving remedial education that:

32 (1) is provided to employees who lack a high school diploma or
 33 educational attainment at the eighth grade level;

34 (2) is designed to provide reading and other basic skills at an
 35 eighth grade level or below; and

36 (3) does not include job specific training.

37 ~~(u)~~ **(v)** Subsection ~~(j)~~ **(k)** does not apply to an employee of a motion
 38 picture theater.

39 ~~(v)~~ **(w)** Subsection ~~(j)~~ **(k)** does not apply to an employee of a
 40 seasonal amusement or recreational establishment, an organized camp,
 41 or a religious or nonprofit educational conference center that is exempt
 42 under the federal Fair Labor Standards Act of 1938, as amended (29

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U.S.C. 213).

SECTION 2. IC 22-2-2.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 2.2. Wage Scale for Construction Projects

Sec. 1. This chapter does not apply to construction projects to the extent that application of this chapter is prohibited by:

- (1) federal law or the terms of a federal grant; or
- (2) Article 1, Section 24 of the Constitution of the State of Indiana.

Sec. 2. As used in this chapter, "contractor" means a firm, an individual, a partnership, a limited liability company, or a corporation.

Sec. 3. As used in this chapter, "public financial assistance" means any grant, loan, incentive, credit or abatement, bond or other type of financing, subsidy, or other form of assistance:

- (1) that totals at least fifty thousand dollars (\$50,000) in a calendar year;
- (2) that is provided by the state, a political subdivision, or an agent or instrumentality of the state or a political subdivision; and
- (3) that is awarded for the initiation, continuation, or expansion of a business located in Indiana.

Sec. 4. A contractor that:

- (1) receives public financial assistance; and
- (2) undertakes a construction project in Indiana;

shall pay for each class of work on the project a scale of wages that may not be less than the prevailing scale of wages being paid in the immediate locality for such class of work as determined by the appropriate committee of state or local government under IC 5-16-7.

Sec. 5. (a) A contractor described in section 4 of this chapter that knowingly or intentionally fails to pay the rate of wages determined under this chapter commits a Class B misdemeanor.

(b) In addition to the penalty under subsection (a), if a contractor has a prior unrelated conviction under subsection (a) and is convicted of a subsequent offense under subsection (a) committed not later than twelve (12) months after the date of the prior offense, the court shall order that the contractor is disqualified for three (3) years after the date of the subsequent offense from receiving any additional public financial assistance.

SECTION 3. [EFFECTIVE JULY 1, 2003] IC 22-2-2.2, as added



1 **by this act, applies only to construction projects undertaken after**
2 **June 30, 2003.**

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